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13 UNITED STATES DISTRICT COURT  
14  
15 CENTRAL DISTRICT OF CALIFORNIA

16 Robert Guillory,  
17 Plaintiff,  
18 v.  
19 EHM Productions Inc.,  
20 Defendants.  
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Case No. 2:22-cv-06185-FLA-RAO  
Hon. Fernando L. Aenlle-Rocha  
Magistrate Rozella A. Oliver

**DISCOVERY MATTER**

**JOINT STIPULATION  
REGARDING EHM'S MOTION  
TO COMPEL GUILLORY'S  
DISCOVERY RESPONSES**

**[Fed. R. Civ. P. 37, Loc. R. 37]**

Action Filed: August 31, 2022

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1 Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule  
2 37-2, Defendant EHM Productions Inc. (“EHM”) and Robert Guillory (“Guillory”  
3 or “Plaintiff”) submit this Joint Stipulation regarding EHM’s Motion to Compel  
4 Further Discovery.

5 The Parties have met and conferred in good faith pursuant to Local Rule 37-  
6 1 via Zoom, in an attempt to resolve this dispute regarding Defendant’s discovery  
7 deficiencies, but were unable to reach a resolution. Ardalan Decl., ¶ 7. Following  
8 the meeting, Plaintiff agreed to supplement his responses to certain interrogatories  
9 and requests for production of documents and provide a privilege log. Plaintiff  
10 represented that he would do his best to get responses by June 29, 2023. On July 5,  
11 plaintiff served supplemental responses. *Id.*

12 **I. INTRODUCTORY STATEMENT BY EHM**

13 **a. The Underlying Dispute**

14 Plaintiff is a photographer. Two real estate agents hired Plaintiff to take  
15 photographs of a house they were listing. The photographs (the “Photographs”)  
16 were widely distributed on Redfin, Zillow, and other real estate websites. Plaintiff’s  
17 website shows that he sells the rights to 25 similar photographs for \$250. Plaintiff  
18 brought this lawsuit against EHM because he contends that TMZ.com, an  
19 entertainment news website, published the Photographs. Thus Plaintiff contends  
20 that EHM infringed his copyright to the photographs.

21 **b. Meet and Confer Efforts**

22 EHM attempted to resolve this dispute without judicial intervention. It sent a  
23 letter outlining the deficiencies in the discovery responses. Ardalan Decl. Ex. F.  
24 Plaintiff did not respond substantively in writing, but agreed to a Zoom meet and  
25 confer conference. Plaintiff agreed “to do [his] best” in getting supplemental  
26 responses and a privilege log by June 29. *Id.* Ex. E. On June 30, EHM followed up  
27 with Plaintiff regarding supplemental responses because EHM did not receive any.  
28 *Id.* Plaintiff did not respond. Ardalan Decl., ¶ 7. On July 5, 2023, Plaintiff sent

supplemental responses to the interrogatories and requests for production of documents, after which, EHM inquired again about a verification to the interrogatory responses, which Plaintiff refused to provide. *Id.*, Ex. G.

**c. Plaintiff's Deficient Responses**

Plaintiff's responses and supplemental responses are deficient for the following reasons:

- Plaintiff refused to provide the most basic information about how he contends he was damaged by EHM.
- Despite having agreed to provide a privilege log, Plaintiff failed to do so.
- Plaintiff has represented that he has provided all responsive documents to certain requests when he has not.
- Plaintiff has failed to provide native files, despite the fact that they were expressly requested by EHM. The native files are particularly important because the metadata might reveal inaccuracies in the copyright registration or inconsistencies with Plaintiff's position regarding his authorship.

**III. PLAINTIFF'S RESPONSES TO EHM'S INTERROGATORIES**  
**INTERROGATORY NO. 5**

If you contend that YOU were harmed by EHM, STATE in detail all facts supporting that position.

**RESPONSE TO INTERROGATORY NO. 5.** Plaintiff objects to this Interrogatory to the extent that it calls for a legal opinion or conclusion. Plaintiff objects to this Interrogatory as being premature, to the extent that he has not completed a review of the documentation provided by Defendant, if any, that would establish the profits and/or revenues earned by Defendant as a result of its infringement of the Photograph. This response is made based upon information available to Plaintiff at this time and Plaintiff reserves the right to amend or supplement this response, without obligating himself to do so, as discovery

1 continues. Further, this response is not intended to constitute a waiver of Plaintiff's  
2 right to elect an award of statutory damages pursuant to 17 U.S.C. § 504(c), which  
3 he may do at any point up until entry of a final judgment.

4 **EHM's Position**

5 Federal Rule of Civil Procedure 26(a), requires that each party provide a  
6 computation of damages before discovery starts. Similarly, this request asks  
7 Plaintiff to describe the harm he attributes to EHM. Guillory has provided no  
8 substantive response, objecting that the response requires a legal conclusion and  
9 that it is premature. It is neither. Significantly, objecting on the basis that the request  
10 calls for a legal conclusion is improper. *Thomas v. Cate*, 715 F.Supp.2d 1012 (E.D.  
11 Cal. 2010) ("the fact that an interrogatory calls for a legal conclusion is not grounds  
12 for an objection."). Moreover, the request could not possibly be premature when  
13 initial disclosures require the parties to provide a more complicated response, i.e. a  
14 calculation of provable damages, as opposed to a holistic explanation about how  
15 plaintiff claims he was harmed.

16 **Guillory's Position**

17 Plaintiff maintains his objection to this Interrogatory on the grounds that it is  
18 premature, to the extent that Plaintiff has not completed a review of the  
19 documentation provided by Defendant, if any, that would establish the profits  
20 and/or revenues earned by Defendant as a result of its infringement of the  
21 Photographs. Subject to the foregoing, Plaintiff responds further as follows:  
22 Plaintiff duly registered the Photographs with the United States Copyright Office.  
23 Defendant, without permission or authorization from Plaintiff, willfully violated his  
24 rights under 17 U.S.C. §106 by illegally copying, storing, reproducing, distributing,  
25 and publicly displaying the Photographs. Plaintiff was then harmed again when  
26 Defendant improperly and illegally copied, stored, reproduced, distributed, and  
27 publicly displayed the Photographs for a second time after this lawsuit was filed.  
28 Defendant used these Photographs for its own financial gain. Further, once

Defendant made the Photographs available for viewing to the public for free, potential licensees would not see the need to purchase the Photographs from Plaintiff. Thus, Plaintiff lost potential profits he could have earned.

#### **Plaintiff Did Not Provide a Verification**

##### **EHM's Position**

“Federal Rule of Civil Procedure 33 requires that a responding party provide a verification made under oath, either through a declaration made under penalty of perjury or through a statement sworn before a notary [].” *Gardias v. San Jose State University*, 2007 WL 1520935, Nos., C04-04086 HRL (N.D. Cal. May 23, 2007) (ordering a party to provide a verification under oath). Plaintiff has not provided a verification, under oath with respect to his interrogatory responses. Plaintiff has provided a signature “as to answers.” Ardalan Decl. Exs. B-1, B-2, G. That is obviously insufficient and could have been an easy fix to avoid motion practice.

##### **Guillory's Position**

Plaintiff provided the verification to the interrogatories on July 12, 2023.

### **III. EHM'S REQUESTS FOR PRODUCTION TO PLAINTIFF**

#### **REQUEST FOR PRODUCTION NO. 1:**

All COMMUNICATIONS regarding this ACTION. **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Plaintiff objects to this request in that the term “regarding” this Action is vague, ambiguous, and overbroad. Plaintiff objects to this request to the extent that it potentially calls for the production of proprietary or confidential business information and documents that are subject to the attorney-client privilege and work product exemption. Plaintiff objects to this request to the extent that it would call for the creation of documents, rather than the production of existing documents. Subject to and without waiving these objections, Plaintiff refers Defendant to the electronic correspondence between Plaintiff, Missy Improta, Jason Improta, and

1 Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
2 invoice for the photographs dated November 29, 2021. This response is based on  
3 the documents presently known, identified and available to Plaintiff. Plaintiff  
4 reserves the right to supplement this response, without obligating himself to do so,  
5 as discovery continues.

6 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**

7 **NO. 1:**

8 Plaintiff objects to this request in that the term "regarding" this Action is  
9 vague, ambiguous, and overbroad. Plaintiff objects to this request to the extent that  
10 it potentially calls for the production of documents that are subject to the attorney-  
11 client privilege and work product exemption. Plaintiff objects to this request to the  
12 extent that it would call for the creation of documents, rather than the production of  
13 existing documents. Subject to and without waiving these objections, Plaintiff refers  
14 Defendant to the electronic correspondence between Plaintiff, Missy Improta, Jason  
15 Improta, and Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along  
16 with Plaintiff's invoice for the photographs dated November 29, 2021. After a  
17 reasonable and diligent search, these are the only documents responsive to this  
18 request at this time. This response is based on the documents presently known,  
19 identified and available to Plaintiff. Plaintiff reserves the right to supplement this  
20 response, without obligating himself to do so, as discovery continues.

21 **EHM's Position**

22 **No Privilege Log**

23 The Federal Rules of Civil Procedure permit a party responding to discovery  
24 requests to withhold information that is privileged or otherwise subject to  
25 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
26 because they impede the full and fair discovery of the truth. *Consumer Financial*  
27 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
28 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,



1 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
 2 privilege log that describes the nature of the documents being withheld with enough  
 3 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
 4 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
 5 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

6 Plaintiff has failed to provide a privilege log. By July 5, almost a week  
 7 later, he did not provide a privilege log. Ardalan Decl., Ex. E, ¶ 7.

### 8 **Guillory’s Position**

9 During the parties meet and confer, Defendant demanded that Plaintiff  
 10 catalogue and itemize all of the communications that have occurred between  
 11 counsel and client concerning this action, including those continuing after  
 12 commencement of the lawsuit. “Courts in this circuit routinely deny a motion to  
 13 compel a privilege log of attorney-client communications or work product dated  
 14 after commencement of litigation.” *In re Snap Inc. Sec. Litig.*, 2018 WL 7501294,  
 15 at \*1 (C.D. Cal. Nov. 29, 2018); see also, e.g., *Mon Cheri Bridals, LLC v.*  
 16 *Cloudflare, Inc.*, 2021 WL 1222492, at \*3 (N.D. Cal. Apr. 1, 2021); *Gaby’s Bags,*  
 17 *LLC v. Mercari, Inc.*, 2020 U.S. Dist. LEXIS 215041, at \*9 (N.D. Cal. Nov. 17,  
 18 2020); *Hiramanek v. Clark*, 2016 WL 217255, at \*6 (N.D. Cal. Jan. 19, 2016);  
 19 *Hernandez v. Best Buy Co., Inc.*, 2014 WL 5454505, at \*10 (S.D. Cal. Oct. 27,  
 20 2014); *Ryan Inv. Corp. v. Pedregal de Cabo San Lucas*, 2009 WL 5114077, at \*3  
 21 (N.D. Cal. Dec. 18, 2009). “[C]ounsel’s communications with the client and work  
 22 product developed once the litigation commences are presumptively privileged and  
 23 need not be included on any privilege log.” *Ryan Inv. Corp.*, 2009 WL 5114077, at  
 24 \*3. “[A] rule requiring creation of an ongoing log of all post-complaint privileged  
 25 communications would have a chilling effect on the attorney-client relationship.”  
 26 *In re Snap Inc. Sec. Litig.*, 2018 WL 7501294, at \*1 (quoting *Grider v. Keystone*  
 27 *Health Plan Cent., Inc.*, 580 F.3d 119, 139 n.22 (3d Cir. 2009)). Defendant has not  
 28 cited to any authority departing from this general practice, or rebutted the



1 presumption that such communications and information are protected. *Colibri*  
 2 *Heart Valve LLC v. Medtronic CoreValve LLC*, 820CV00847DOCJDEX, 2021 WL  
 3 6882375, at \*3 (C.D. Cal. Dec. 6, 2021)

4 Plaintiff has provided a privilege log concerning any withheld  
 5 communication other than those as and between counsel and client concerning this  
 6 action.

7  
 8 **REQUEST FOR PRODUCTION NO. 2:**

9 All COMMUNICATIONS regarding EHM.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

11 Plaintiff objects to this request in that the term Communications “regarding”  
 12 EHM is vague, ambiguous, and overbroad. Plaintiff objects to this request to the  
 13 extent that it potentially calls for documents that are subject to the attorney-client  
 14 privilege and work product exemption. Plaintiff objects to this request to the extent  
 15 that it would call for the creation of documents, rather than the production of  
 16 existing documents. Subject to and without waiving these objections, Plaintiff has  
 17 no documents responsive to this Request. This response is based on the documents  
 18 presently known, identified and available to Plaintiff. Plaintiff reserves the right to  
 19 supplement this response, without obligating himself to do so, as discovery  
 20 continues.

21 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
 22 **NO. 2:**

23 Plaintiff objects to this request in that the term Communications “regarding”  
 24 EHM is vague, ambiguous, and overbroad. Plaintiff objects to this request to the  
 25 extent that it potentially calls for documents that are subject to the attorney-client  
 26 privilege and work product exemption. Plaintiff objects to this request to the extent  
 27 that it would call for the creation of documents, rather than the production of  
 28 existing documents. Subject to and without waiving these objections, Plaintiff has

no documents responsive to this Request. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**EHM's Position**

**No Privilege Log**

The Federal Rules of Civil Procedure permit a party responding to discovery requests to withhold information that is privileged or otherwise subject to protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed because they impede the full and fair discovery of the truth. *Consumer Financial Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*, 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a privilege log that describes the nature of the documents being withheld with enough information to enable other parties to assess the claim.” *Id.* (alteration and internal quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v. Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

Plaintiff has failed to provide a privilege log, despite acknowledging that he would provide one by June 29. By July 5, almost a week later, he did not provide a privilege log. Ardalan Decl., Ex. E, ¶ 7.

**Guillory's Position**

Plaintiff has substantively responded to Defendant's request. The only documents that exist related to EHM are those between counsel and client which as discussed above are privileged and for which no privilege log is required.

**REQUEST FOR PRODUCTION NO. 3**

All DOCUMENTS that constitute, embody, reflect, or refer to any oral or written agreement, including license agreements, settlement agreements,

1 assignment agreements, and work-for-hire agreements, between YOU and any  
2 other PERSON regarding the WORKS AT ISSUE.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

4 Plaintiff objects to this request to the extent that it would call for the creation  
5 of documents, rather than the production of existing documents. Subject to and  
6 without waiving these objections, Plaintiff refers Defendant to the electronic  
7 correspondence between Plaintiff, Missy Improta, Jason Improta, and Katie  
8 Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
9 invoice for the photographs dated November 29, 2021. This response is based on  
10 the documents presently known, identified and available to Plaintiff. Plaintiff  
11 reserves the right to supplement this response, without obligating himself to do so,  
12 as discovery continues.

13 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
14 **NO. 3:**

15 Plaintiff objects to this request to the extent that it would call for the creation  
16 of documents, rather than the production of existing documents. Subject to and  
17 without waiving these objections, Plaintiff refers Defendant to the electronic  
18 correspondence between Plaintiff, Missy Improta, Jason Improta, and Katie  
19 Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
20 invoice for the photographs dated November 29, 2021. After a reasonable and  
21 diligent search, these are the only documents responsive to this request at this time.  
22 This response is based on the documents presently known, identified and available  
23 to Plaintiff. Plaintiff reserves the right to supplement this response, without  
24 obligating himself to do so, as discovery continues.

25  
26 **EHM's Position**

27 After supplementing his responses, Plaintiff took the position that all  
28

responsive documents have been produced.<sup>1</sup> Ardalan Decl., Ex. G, at 2:40. It is not plausible that all documents were produced. For example, EHM knows that Plaintiff settled disputes regarding the same photographs with other parties, like *The Sun*, but plaintiff has not produced those settlement agreements. He has also waived privilege with respect any privileged documents that may refer to or reflect any written or oral agreement regarding the photographs. Defendant has not made any meaningful objection to this request, so it should be compelled.

### **Guillory's Position**

Plaintiff notified Defendant of the following information: Plaintiff has filed the following lawsuits in attempt to enforce his copyright rights in the Photographs: *Guillory v. Backgrid USA, Inc. and The Grosby Group Inc.* (2:23-cv-00776-FLA-RAOx, Central District of California), *Guillory v. American Luxury LLC* (6:23-cv-00226-WWB0EJK, Middle District of Florida), *Guillory v. Hollywoodlife.com, LLC* (3:22-cv-01264-OAW, District of Connecticut), *Guillory v. Source Digital, Inc.* (1:23-cv-01333-PAE-OTW, Southern District of New York), *Guillory v. The Sun US, INC. n/k/a News Enterprises, Inc.* (1:22-cv-08471-ALC Southern District of New York), and *Guillory v. Korangy Publishing Inc.* (1:23-cv-01103-VM). All documents related to these lawsuits are available to Defendant on the public

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<sup>1</sup> In response to a request for production of documents under Rule 34 of the Federal Rules of Civil Procedure, a party is to produce all responsive documents in its "possession, custody, or control." *Bryant v. Armstrong*, 285 F.R.D. 596, 603 (S.D. Cal. 2012) (citing Fed.R.Civ.P. 34(a)(1)). The requesting party "is entitled to individualized, complete responses to each of the requests,...accompanied by production of each of the documents responsive to the request, regardless of whether the documents have already been produced [to the requesting party]." *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006). Guillory did not make it clear whether he was producing all responsive documents. Guillory supplemented his responses, but they still do not comply. *See* Responses to RFPs 1, 3-34, 37, 38, 40-43. Counsel has claimed everything in his "custody and control" has been produced, but that still isn't sufficient. In an effort to avoid the use of judicial resources, EHM did not separately move on each of these requests on this basis.

1 dockets. Plaintiff has also sent letters on the following matters attempting to enforce  
2 his copyright rights in these Photographs: *Guillory v. Haven Lifestyles, Inc., Ltd.*,  
3 *Guillory v. JMS Grandex Notes LLC*, *Guillory v. Planck, LLC*, *Guillory v. Dirt.com,*  
4 *LLC*, and *Guillory v. Associated Newspapers (U.S.A.) Limited*. These letters were  
5 produced. Any settlement agreements or settlement negotiations regarding the  
6 matters listed above are confidential and not relevant to the present case. Defendant  
7 has offered no proffer as to how these documents would be relevant to the case or  
8 controversy between Plaintiff and Defendant such that any consideration as to how  
9 to deal with the confidential aspect of such agreements and discussions would need  
10 to be determined.

11  
12 **REQUEST FOR PRODUCTION NO. 4**

13 All DOCUMENTS that constitute, embody, reflect, or refer to any agreement  
14 between YOU and any other PERSON whereby YOU licensed or authorized the  
15 use of any of the WORKS AT ISSUE, by any PERSON, in any manner, including  
16 on or in any audiovisual work, website, digital media outlet, or print publication.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

18 Plaintiff objects to this request to the extent that it potentially calls for the  
19 production of proprietary or confidential business information and/or documents  
20 that are subject to the attorney-client privilege and work product exemption.  
21 Plaintiff objects to this request to the extent that it would call for the creation of  
22 documents, rather than the production of existing documents. Subject to and  
23 without waiving these objections, Plaintiff refers Defendant to the electronic  
24 correspondence between Plaintiff, Missy Improta, Jason Improta, and Katie  
25 Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
26 invoice for the photographs dated November 29, 2021. This response is based on  
27 the documents presently known, identified and available to Plaintiff. Plaintiff  
28 reserves the right to supplement this response, without obligating himself to do so,

1 as discovery continues.

2 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
3 **NO. 4**

4 Plaintiff objects to this request to the extent that it potentially calls for the  
5 production of documents that are subject to the attorney-client privilege and work  
6 product exemption. Plaintiff objects to this request to the extent that it would call  
7 for the creation of documents, rather than the production of existing documents.  
8 Subject to and without waiving these objections, Plaintiff refers Defendant to the  
9 electronic correspondence between Plaintiff, Missy Improta, Jason Improta, and  
10 Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
11 invoice for the photographs dated November 29, 2021. After a reasonable and  
12 diligent search, these are the only documents responsive to this request at this time.  
13 This response is based on the documents presently known, identified and available  
14 to Plaintiff. Plaintiff reserves the right to supplement this response, without  
15 obligating himself to do so, as discovery continues.

16 **EHM's Position**

17 **No Privilege Log**

18 The Federal Rules of Civil Procedure permit a party responding to discovery  
19 requests to withhold information that is privileged or otherwise subject to  
20 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
21 because they impede the full and fair discovery of the truth. *Consumer Financial*  
22 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
23 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
24 136 F.R.D. 179, 183 (E.D. Cal. 1991). "[T]he objecting party must produce a  
25 privilege log that describes the nature of the documents being withheld with enough  
26 information to enable other parties to assess the claim." *Id.* (alteration and internal  
27 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
28 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

1 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
2 would provide one by June 29. By July 5, almost a week later, he did not provide  
3 a privilege log. Ardalan Decl., Ex. E, ¶ 7.

4 **Guillory's Position:**

5 No documents were withheld based upon attorney-client privilege or any  
6 other privilege. As such, there is no need for a privilege log. Defendant received a  
7 substantive response to its request and therefore there is no basis to compel  
8 anything further.

9  
10 **REQUEST FOR PRODUCTION NO. 6**

11 All DOCUMENTS that constitute, embody, reflect, or refer to any  
12 COMMUNICATIONS between YOU and any other PERSON concerning any  
13 proposed, requested, or contemplated use of any of the WORKS AT ISSUE, for use  
14 in any manner, including on or in any audiovisual work, on any website or digital  
15 media outlet, or in any print publication.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

17 Plaintiff objects to this request to the extent that it duplicative of other  
18 requests made herein. Plaintiff objects to this request to the extent that it potentially  
19 calls for the production of proprietary or confidential business information and/or  
20 documents that are subject to the attorney-client privilege and work product  
21 exemption. Plaintiff objects to this request to the extent that it would call for the  
22 creation of documents, rather than the production of existing documents. Subject to  
23 and without waiving these objections, Plaintiff refers Defendant to the electronic  
24 correspondence between Plaintiff, Missy Improta, Jason Improta, and Katie  
25 Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
26 invoice for the photographs dated November 29, 2021. This response is based on  
27 the documents presently known, identified and available to Plaintiff. Plaintiff  
28



1 reserves the right to supplement this response, without obligating himself to do so,  
2 as discovery continues.

3 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
4 **NO. 6**

5 Plaintiff objects to this request to the extent that it duplicative of other  
6 requests made herein. Plaintiff objects to this request to the extent that it potentially  
7 calls for the production of documents that are subject to the attorney-client privilege  
8 and work product exemption. Plaintiff objects to this request to the extent that it  
9 would call for the creation of documents, rather than the production of existing  
10 documents. Subject to and without waiving these objections, Plaintiff refers  
11 Defendant to the electronic correspondence between Plaintiff, Missy Improta, Jason  
12 Improta, and Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along  
13 with Plaintiff's invoice for the photographs dated November 29, 2021. After a  
14 reasonable and diligent search, these are the only documents responsive to this  
15 request at this time. This response is based on the documents presently known,  
16 identified and available to Plaintiff. Plaintiff reserves the right to supplement this  
17 response, without obligating himself to do so, as discovery continues.

18 **EHM's Position**

19 **No Privilege Log**

20 The Federal Rules of Civil Procedure permit a party responding to discovery  
21 requests to withhold information that is privileged or otherwise subject to  
22 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
23 because they impede the full and fair discovery of the truth. *Consumer Financial*  
24 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
25 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
26 136 F.R.D. 179, 183 (E.D. Cal. 1991). "[T]he objecting party must produce a  
27 privilege log that describes the nature of the documents being withheld with enough  
28 information to enable other parties to assess the claim." *Id.* (alteration and internal

quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v. Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

Plaintiff has failed to provide a privilege log, despite acknowledging that he would provide one by June 29. By July 5, almost a week later, he did not provide a privilege log. Ardalan Decl., Ex. E, ¶ 7. It is unclear why any documents responsive to this request would be privileged, making the need for a privilege log even more apparent.

### **Guillory's Position**

No documents were withheld based upon attorney-client privilege or any other privilege. As such, there is no need for a privilege log. Defendant received a substantive response to its request and therefore there is no basis to compel anything further.

### **REQUEST FOR PRODUCTION NO. 19**

All DOCUMENTS that constitute, embody, reflect, or refer to any agreements, including settlement agreements, entered into by YOU in connection with the unauthorized use of any of the WORKS AT ISSUE.

### **PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Plaintiff objects to this request to the extent that it duplicative of other requests made herein. Plaintiff further objects to the extent that this information is irrelevant to the issues in this case or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this request to the extent that it potentially calls for the production of proprietary or confidential business information and/or documents that are subject to the attorney-client privilege and work product exemption. Subject to and without waiving these objections, Plaintiff has no documents responsive to this Request other than those otherwise produced herein. This response is based on the documents presently known, identified and

1 available to Plaintiff. Plaintiff reserves the right to supplement this response,  
2 without obligating himself to do so, as discovery continues.

3 **EHM's Position**

4 **It Is Not Plausible that No Responsive Documents Exist**

5 After supplementing his responses, Plaintiff took the position that all  
6 responsive documents have been produced.<sup>2</sup> Ardalan Decl., Ex. G, at 2:40. It is not  
7 plausible that all documents were produced. EHM understands that plaintiff has  
8 pursued other parties who he contends infringed the same Photographs and has  
9 resolved his copyright infringement claims with those parties, including with the  
10 publication *The Sun*. Ardalan Decl., ¶ 8. Plaintiff is withholding documents despite  
11 his contention that it is not. Plaintiff also contends that the information is proprietary  
12 or confidential business information, but the parties have entered into a stipulated  
13 protective order which addresses this concern. Plaintiff should be ordered to  
14 produce all responsive documents.

15 **No Privilege Log**

16 The Federal Rules of Civil Procedure permit a party responding to discovery  
17 requests to withhold information that is privileged or otherwise subject to  
18 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed

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19  
20 <sup>2</sup> In response to a request for production of documents under Rule 34 of the Federal  
21 Rules of Civil Procedure, a party is to produce all responsive documents in its  
22 “possession, custody, or control.” *Bryant v. Armstrong*, 285 F.R.D. 596, 603 (S.D.  
23 Cal. 2012) (citing Fed.R.Civ.P. 34(a)(1)). The requesting party “is entitled to  
24 individualized, complete responses to each of the requests,...accompanied by  
25 production of each of the documents responsive to the request, regardless of  
26 whether the documents have already been produced [to the requesting party].”  
27 *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006). Guillory did not make clear  
28 whether he was producing all responsive documents. Guillory supplemented his  
responses, but they still do not comply. See Responses to RFPs 1, 3-34, 37, 38, 40-  
43. Counsel has claimed everything in his “custody and control” has been  
produced, but that still isn’t sufficient. In an effort to avoid the use of judicial  
resources, EHM did not separately move on each of these requests on this basis.

1 because they impede the full and fair discovery of the truth. *Consumer Financial*  
2 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
3 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
4 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
5 privilege log that describes the nature of the documents being withheld with enough  
6 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
7 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
8 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

9 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
10 would provide one by June 29. By July 5, almost a week later, he did not provide a  
11 privilege log. Ardalan Decl., Ex. E, ¶ 7.

12 **Guillory’s Position** The only documents that would be responsive to  
13 this request are settlement agreements or settlement negotiations regarding the  
14 matters listed above which, as aforementioned, are confidential and not relevant to the  
15 present case or communications between counsel and client which were also  
16 discussed above.

17 **REQUEST FOR PRODUCTION NO. 21**

18 All DOCUMENTS relating to any efforts made by YOU to enforce YOUR  
19 copyrights or other intellectual property rights in the WORKS AT ISSUE.

20 **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**

21 **21:**

22 Plaintiff objects to this request to the extent that it duplicative of other  
23 requests made herein. Plaintiff further objects to the extent that this information is  
24 irrelevant to the issues in this case or not reasonably calculated to lead to the  
25 discovery of admissible evidence. Plaintiff objects to this request to the extent that  
26 it potentially calls for the production of proprietary or confidential business  
27 information and/or documents that are subject to the attorney-client privilege and  
28 work product exemption. Subject to and without waiving these objections, Plaintiff

1 has no documents responsive to this Request other than those otherwise produced  
2 herein. This response is based on the documents presently known, identified and  
3 available to Plaintiff. Plaintiff reserves the right to supplement this response,  
4 without obligating himself to do so, as discovery continues.

5 **EHM's Position**

6 **It Is Not Plausible that No Responsive Documents Exist**

7 After supplementing his responses, Plaintiff took the position that all  
8 responsive documents have been produced.<sup>3</sup> Ardalan Decl., Ex. G, at 2:40. It is not  
9 plausible that all documents were produced. EHM understands that plaintiff has  
10 pursued other parties who he contends infringed the same Photographs and has  
11 resolved his copyright infringement claims with those parties, including with the  
12 publication *The Sun*. Ardalan Decl., ¶ 8. Plaintiff also filed a lawsuit and engaged  
13 in correspondence with Backgrid USA, Inc., which has not been produced. Plaintiff  
14 is withholding documents despite its contention that it is not. Plaintiff also contends  
15 that the information is proprietary or confidential business information, but the  
16 parties have entered into a stipulated protective order that addresses this concern.  
17 Plaintiff should be ordered to produce all responsive documents.

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18  
19  
20 <sup>3</sup> In response to a request for production of documents under Rule 34 of the  
21 Federal Rules of Civil Procedure, a party is to produce all responsive documents  
22 in its “possession, custody, or control.” *Bryant v. Armstrong*, 285 F.R.D. 596, 603  
23 (S.D. Cal. 2012) (citing Fed.R.Civ.P. 34(a)(1)). The requesting party “is entitled  
24 to individualized, complete responses to each of the requests,...accompanied by  
25 production of each of the documents responsive to the request, regardless of  
26 whether the documents have already been produced [to the requesting party].”  
27 *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006). Guillory did not make  
28 clear whether he was producing all responsive documents. Guillory supplemented  
his responses, but they still do not comply. *See* Responses to RFPs 1, 3-34, 37,  
38, 40-43. Counsel has claimed everything in his “custody and control” has been  
produced, but that still isn’t sufficient. In an effort to avoid the use of judicial  
resources, EHM did not separately move on each of these requests on this basis.

1           **No Privilege Log**

2           The Federal Rules of Civil Procedure permit a party responding to discovery  
3 requests to withhold information that is privileged or otherwise subject to  
4 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
5 because they impede the full and fair discovery of the truth. *Consumer Financial*  
6 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
7 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
8 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
9 privilege log that describes the nature of the documents being withheld with enough  
10 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
11 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
12 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

13           Plaintiff has failed to provide a privilege log, despite acknowledging that he  
14 would provide one by June 29. By July 5, almost a week later, he did not provide a  
15 privilege log. Ardalan Decl., Ex. E, ¶ 7.

16           **Guillory’s Position**

17           Defendant’s request, response and objections are substantively identical to  
18 those set forth in response to Interrogatory No. 3. Plaintiff therefore refers  
19 Defendant to *Guillory’s Position* at response to Interrogatory No. 3 *supra*.

20           In addition, Guillory states as follows: Settlement agreements and/or  
21 settlement negotiations regarding the matters listed above are confidential and not  
22 relevant to the present case. Similarly, communications between counsel and client  
23 are privileged and, for the reasons previously stated, no privilege log is required in  
24 this Circuit.

25  
26           **REQUEST FOR PRODUCTION NO. 23**

27           All DOCUMENTS that constitute, embody, reflect, or refer to any  
28 COMMUNICATIONS between YOU and any other PERSON regarding any

1 proposed or completed agreement concerning the use, exploitation, or licensing of  
2 any of the WORKS AT ISSUE, including but not limited to negotiation documents  
3 for any license or settlement agreement.

4 **PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION NO.**

5 **23:**

6 Plaintiff objects to this request to the extent that it is duplicative of other  
7 requests made herein. Plaintiff further objects to the extent that this information is  
8 irrelevant to the issues in this case or not reasonably calculated to lead to the  
9 discovery of admissible evidence. Plaintiff objects to this request to the extent that  
10 it potentially calls for the production of proprietary or confidential business  
11 information and documents that are subject to the attorney-client privilege and work  
12 product exemption. Subject to and without waiving these objections, Plaintiff refers  
13 Defendant to the electronic correspondence between Plaintiff, Missy Improta, Jason  
14 Improta, and Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along  
15 with Plaintiff's invoice for the photographs dated November 29, 2021. This  
16 response is based on the documents presently known, identified and available to  
17 Plaintiff. Plaintiff reserves the right to supplement this response, without obligating  
18 himself to do so, as discovery continues.

19 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
20 **NO. 23**

21 Plaintiff objects to this request to the extent that it is duplicative of other  
22 requests made herein. Plaintiff further objects to the extent that this information is  
23 irrelevant to the issues in this case or not reasonably calculated to lead to the  
24 discovery of admissible evidence. Plaintiff objects to this request to the extent that  
25 it potentially calls for the production of documents that are subject to the attorney-  
26 client privilege and work product exemption. Subject to and without waiving these  
27 objections, Plaintiff refers Defendant to the electronic correspondence between  
28 Plaintiff, Missy Improta, Jason Improta, and Katie Pederson dated November 7, 8,



1 10, 21, 22, and 28, 2021, along with Plaintiff's invoice for the photographs dated  
2 November 29, 2021. This response is based on the documents presently known,  
3 identified and available to Plaintiff. After a reasonable and diligent search, these are  
4 the only documents responsive to this request at this time. Plaintiff reserves the right  
5 to supplement this response, without obligating himself to do so, as discovery  
6 continues.

7 **EHM's Position**

8 **It Is Not Plausible that No Responsive Documents Exist**

9 After supplementing his responses, Plaintiff took the position that all  
10 responsive documents have been produced.<sup>4</sup> Ardalan Decl., Ex. G, at 2:40. It is not  
11 plausible that all documents were produced. EHM understands that plaintiff has  
12 pursued other parties who he contends infringed the same Photographs in this case  
13 and has resolved his copyright infringement claims with those parties, including  
14 with the publication *The Sun*. Ardalan Decl., ¶ 8. Plaintiff also filed a lawsuit and  
15 engaged in correspondence with Backgrid USA, Inc., which has not been produced.  
16 Plaintiff is withholding documents despite his contention that it is not. Plaintiff also  
17 contends that the information is proprietary or confidential business information,  
18 but the parties have entered into a stipulated protective order that addresses this

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19  
20 <sup>4</sup> In response to a request for production of documents under Rule 34 of the  
21 Federal Rules of Civil Procedure, a party is to produce all responsive documents  
22 in its "possession, custody, or control." *Bryant v. Armstrong*, 285 F.R.D. 596, 603  
23 (S.D. Cal. 2012) (citing Fed.R.Civ.P. 34(a)(1)). The requesting party "is entitled  
24 to individualized, complete responses to each of the requests,...accompanied by  
25 production of each of the documents responsive to the request, regardless of  
26 whether the documents have already been produced [to the requesting party]." *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006). Guillory did not make  
27 clear whether he was producing all responsive documents. Guillory supplemented  
28 his responses, but they still do not comply. *See* Responses to RFPs 1, 3-34, 37,  
38, 40-43. Counsel has claimed everything in his "custody and control" has been  
produced, but that still isn't sufficient. In an effort to avoid the use of judicial  
resources, EHM did not separately move on each of these requests on this basis.

1 concern. Plaintiff should be ordered to produce all responsive documents.

2 **No Privilege Log**

3 The Federal Rules of Civil Procedure permit a party responding to discovery  
4 requests to withhold information that is privileged or otherwise subject to  
5 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
6 because they impede the full and fair discovery of the truth. *Consumer Financial*  
7 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
8 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
9 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
10 privilege log that describes the nature of the documents being withheld with enough  
11 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
12 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
13 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

14 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
15 would provide one by June 29. By July 5, almost a week later, he did not provide a  
16 privilege log. Ardalan Decl., Ex. E, ¶ 7.

17 **Guillory’s Position**

18 Defendant’s request, response and objections are substantively identical to  
19 those set forth in response to Interrogatory Nos. 3 and 21. Plaintiff therefore  
20 refers Defendant to *Guillory’s Position* at response to Interrogatory Nos. 3 and 21  
21 *supra*.

22 **REQUEST FOR PRODUCTION NO. 24**

23 All DOCUMENTS relating to any sums paid to YOU in connection with  
24 the use, exploitation, or licensing of any of the WORKS AT ISSUE.

25 **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
26 **24:**

27 Plaintiff objects to this request to the extent that it duplicative of other  
28 requests made herein. Plaintiff objects to this request to the extent that it calls for

1 the production of documents already in Defendant's possession, custody and/or  
2 control. Plaintiff objects to this request to the extent that it potentially calls for the  
3 production of proprietary or confidential business information and documents that  
4 are subject to the attorney-client privilege and work product exemption. Plaintiff  
5 objects to this request to the extent that it would call for the creation of documents,  
6 rather than the production of existing documents. Subject to and without waiving  
7 these objections, Plaintiff refers Defendant to Plaintiff's invoice for the photographs  
8 dated November 29, 2021. This response is based on the documents presently  
9 known, identified and available to Plaintiff. Plaintiff reserves the right to  
10 supplement this response, without obligating himself to do so, as discovery  
11 continues.

12 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
13 **NO. 24**

14 Plaintiff objects to this request to the extent that it duplicative of other  
15 requests made herein. Plaintiff objects to this request to the extent that it calls for  
16 the production of documents already in Defendant's possession, custody and/or  
17 control. Plaintiff objects to this request to the extent that it potentially calls for the  
18 production of proprietary or confidential business information and documents that  
19 are subject to the attorney-client privilege and work product exemption. Plaintiff  
20 objects to this request to the extent that it would call for the creation of documents,  
21 rather than the production of existing documents. Subject to and without waiving  
22 these objections, Plaintiff refers Defendant to Plaintiff's invoice for the photographs  
23 dated November 29, 2021. After a reasonable and diligent search, these are the only  
24 documents responsive to this request at this time. This response is based on the  
25 documents presently known, identified and available to Plaintiff. Plaintiff reserves  
26 the right to supplement this response, without obligating himself to do so, as  
27 discovery continues.

1           **EHM's Position**

2           **No Privilege Log**

3           The Federal Rules of Civil Procedure permit a party responding to discovery  
4 requests to withhold information that is privileged or otherwise subject to  
5 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
6 because they impede the full and fair discovery of the truth. *Consumer Financial*  
7 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
8 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
9 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
10 privilege log that describes the nature of the documents being withheld with enough  
11 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
12 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
13 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9<sup>th</sup> Cir. 2009)).

14           Plaintiff has failed to provide a privilege log, despite acknowledging that he  
15 would provide one by June 29. By July 5, almost a week later, he did not provide  
16 a privilege log. Ardalan Decl., Ex. E, ¶ 7.

17           **Guillory's Position:**

18           For the reasons set forth more fully above, settlement agreements and/or  
19 settlement negotiations regarding the matters listed above are both confidential and  
20 not relevant to the present case. Similarly, communications between counsel and  
21 client are privileged and, for the reasons previously stated, no privilege log is  
22 required in this Circuit. See, e.g., *Guillory's Position at response to Interrogatory*  
23 *No. 1.*

24  
25           **REQUEST FOR PRODUCTION NO. 25**

26           All DOCUMENTS relating to any sums paid by YOU to any third party, in  
27 connection with the use, exploitation, or licensing of any of the WORKS AT  
28 ISSUE.

1           **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
2           **25:**

3           Plaintiff objects to this request to the extent that it duplicative of other  
4 requests made herein. Plaintiff further objects to the extent that this information is  
5 irrelevant to the issues in this case or not reasonably calculated to lead to the  
6 discovery of admissible evidence. Plaintiff objects to this request to the extent that  
7 it potentially calls for the production of proprietary or confidential business  
8 information and documents that are subject to the attorney-client privilege and work  
9 product exemption. Subject to and without waiving these objections, Plaintiff has  
10 no documents responsive to this Request other than those otherwise produced  
11 herein. This response is based on the documents presently known, identified and  
12 available to Plaintiff. Plaintiff reserves the right to supplement this response,  
13 without obligating himself to do so, as discovery continues.

14           **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
15           **NO. 25**

16           Plaintiff objects to this request to the extent that it is duplicative of other  
17 requests made herein. Plaintiff further objects to the extent that this information is  
18 irrelevant to the issues in this case or not reasonably calculated to lead to the  
19 discovery of admissible evidence. Subject to and without waiving these objections,  
20 Plaintiff has no documents responsive to this Request other than those otherwise  
21 produced herein. This response is based on the documents presently known,  
22 identified and available to Plaintiff. Plaintiff reserves the right to supplement this  
23 response, without obligating himself to do so, as discovery continues.

24           **EHM’s Position**

25           **No Privilege Log**

26           The Federal Rules of Civil Procedure permit a party responding to discovery  
27 requests to withhold information that is privileged or otherwise subject to  
28 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed

1 because they impede the full and fair discovery of the truth. *Consumer Financial*  
2 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
3 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
4 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
5 privilege log that describes the nature of the documents being withheld with enough  
6 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
7 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
8 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

9 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
10 would provide one by June 29.. By July 5, almost a week later, he did not provide  
11 a privilege log. Ardalan Decl., Ex. E, ¶ 7.

12 **Guillory’s Position:**

13 Plaintiff has provided Defendant with a substantive response to its request.  
14 No documents are being withheld based on the attorney-client privilege. As such,  
15 there is nothing to compel.

16  
17 **REQUEST FOR PRODUCTION NO. 28**

18 All DOCUMENTS relating to any income or revenue YOU received in  
19 connection with the WORKS AT ISSUE from the date of their creation until the  
20 present.

21 **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
22 **28:**

23 Plaintiff objects to this request to the extent that it duplicative of other  
24 requests made herein. Subject to and without waiving these objections, Plaintiff  
25 refers Defendant to Plaintiff’s invoice for the photographs dated November 29,  
26 2021. This response is based on the documents presently known, identified and  
27 available to Plaintiff. Plaintiff reserves the right to supplement this response,  
28 without obligating himself to do so, as discovery continues.

**SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION  
NO. 28**

Plaintiff objects to this request to the extent that it duplicative of other requests made herein. Subject to and without waiving these objections, Plaintiff refers Defendant to Plaintiff's invoice for the photographs dated November 29, 2021. After a reasonable and diligent search, these are the only documents responsive to this request at this time. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**EHM Position**

After supplementing his responses, Plaintiff took the position that all responsive documents have been produced.<sup>5</sup> Ardalan Decl., Ex. G, at 2:40. It is not plausible that all documents are produced. EHM understands that plaintiff has pursued other parties who he contends infringed the same Photographs and has resolved his copyright infringement claims with those parties, including with the publication *The Sun*. Ardalan Decl., ¶ 8. Plaintiff also filed a lawsuit and engaged in correspondence with Backgrid USA, Inc., which has not been produced. Plaintiff

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<sup>5</sup> In response to a request for production of documents under Rule 34 of the Federal Rules of Civil Procedure, a party is to produce all responsive documents in its "possession, custody, or control." *Bryant v. Armstrong*, 285 F.R.D. 596, 603 (S.D. Cal. 2012) (citing Fed.R.Civ.P. 34(a)(1)). The requesting party "is entitled to individualized, complete responses to each of the requests,...accompanied by production of each of the documents responsive to the request, regardless of whether the documents have already been produced [to the requesting party]." *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006). Guillory did not make clear whether he was producing all responsive documents. Guillory supplemented his responses, but they still do not comply. *See* Responses to RFPs 1, 3-34, 37, 38, 40-43. Counsel has claimed everything in his "custody and control" has been produced, but that still isn't sufficient. In an effort to avoid the use of judicial resources, EHM did not separately move on each of these requests on this basis.



1 is withholding documents despite his contention that it is not. Plaintiff also contends  
2 that the information is proprietary or confidential business information, but the  
3 parties have entered into a stipulated protective order that addresses this concern.  
4 Plaintiff should be ordered to produce all responsive documents.

5 **No Privilege Log**

6 The Federal Rules of Civil Procedure permit a party responding to discovery  
7 requests to withhold information that is privileged or otherwise subject to  
8 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
9 because they impede the full and fair discovery of the truth. *Consumer Financial*  
10 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
11 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
12 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
13 privilege log that describes the nature of the documents being withheld with enough  
14 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
15 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
16 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

17 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
18 would provide one by June 29.. By July 5, almost a week later, he did not provide  
19 a privilege log. Ardalan Decl., Ex. E, ¶ 7.

20 **Guillory’s Position:**

21 *See Guillory’s Position at Response to Interrogatory No. 24.*  
22

23 **REQUEST FOR PRODUCTION NO. 29**

24 All DOCUMENTS that support any of YOUR claims for damages in this  
25 ACTION.

26 **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
27 **29:**

28 Plaintiff objects to this request to the extent that it calls for a legal opinion or

1 conclusion. Plaintiff objects to this request as being premature, to the extent that he  
2 has not completed a review of the documentation provided by Defendant, if any,  
3 that would establish the profits and/or revenues earned by Defendant as a result of  
4 its infringement of the Photograph. This response is made based upon information  
5 available to Plaintiff at this time and Plaintiff reserves the right to amend or  
6 supplement this response, without obligating himself to do so, as discovery  
7 continues. Further, this response is not intended to constitute a waiver of Plaintiff's  
8 right to elect an award of statutory damages pursuant to 17 U.S.C. § 504(c), which  
9 he may do at any point up until entry of a final judgment.

10 **EHM's Position**

11 Plaintiff does not explain whether he has responsive documents in his  
12 possession, custody, or control that supports his claim of damages, let alone whether  
13 he will produce them. These documents fit squarely within Federal Rule of Civil  
14 Procedure 26(a), which requires that each party provide a computation of damages.  
15 Plaintiff is required to produce all responsive documents supporting his claim of  
16 damages in this case, if he has any. There is no justification for claiming that these  
17 documents are "premature." EHM learned through its own investigation, not  
18 through documents produced by Guillory, that Plaintiff's typical rate for selling  
19 rights to photographs is \$250 for 25 photographs. He has not produced any such  
20 documents.

21 **Guillory's Response:**

22 Plaintiff does not have any documents in response to this Request. The only  
23 potentially responsive documents are those in the Defendant's custody and control  
24 concerning any profits which would be subject to disgorgement under 17 U.S.C.  
25 §504(b) which Defendant failed to produce during discovery. Since Defendant has  
26 yet to produce this information, Plaintiff does not yet have any document responsive  
27 to this demand. There is therefore nothing to compel; other than Defendant's  
28 production discussed below.

**REQUEST FOR PRODUCTION NO. 35**

All DOCUMENTS that constitute, embody, reflect, or refer to any COMMUNICATIONS between YOU and any other PERSON concerning any authorized or unauthorized use of the WORKS AT ISSUE by EHM

**PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

Plaintiff objects to this request to the extent that it duplicative of other requests made herein. Plaintiff further objects to the extent that this information is irrelevant to the issues in this case or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this request to the extent that it potentially calls for the production of documents that are subject to the attorney-client privilege and work product exemption. Subject to and without waiving these objections, Plaintiff has no documents responsive to this Request. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 35**

Plaintiff objects to this request to the extent that it is duplicative of other requests made herein. Plaintiff further objects to the extent that this information is irrelevant to the issues in this case or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this request to the extent that it potentially calls for the production of documents that are subject to the attorney-client privilege and work product exemption. Subject to and without waiving these objections, Plaintiff has no documents responsive to this Request. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**EHM's Position**

**No Privilege Log**

The Federal Rules of Civil Procedure permit a party responding to discovery requests to withhold information that is privileged or otherwise subject to protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed because they impede the full and fair discovery of the truth. *Consumer Financial Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*, 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a privilege log that describes the nature of the documents being withheld with enough information to enable other parties to assess the claim.” *Id.* (alteration and internal quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v. Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

Plaintiff has failed to provide a privilege log, despite acknowledging that he would provide one by June 29. By July 5, almost a week later, he did not provide a privilege log. Ardalan Decl., Ex. E, ¶ 7.

**Guillory's Position:**

Defendant's request, response and objections are substantively identical to those set forth in response to Interrogatory Nos. 3, 21 and 23. Plaintiff therefore refers Defendant to *Guillory's Position* at response to Interrogatory Nos. 3, 21 and 23 *supra*.

**REQUEST FOR PRODUCTION NO. 36**

All DOCUMENTS relating to YOUR investigation into or discovery of the alleged infringement at issue in this lawsuit.

**PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

Plaintiff objects to this request to the extent that it is duplicative of other

requests made herein. Plaintiff further objects to the extent that this information is irrelevant to the issues in this case or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this request to the extent that it potentially calls for the production of proprietary or confidential business information and/or documents that are subject to the attorney-client privilege and work product exemption. Subject to and without waiving these objections, Plaintiff has no documents responsive to this Request. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION  
NO. 36**

Plaintiff objects to this request to the extent that it is duplicative of other requests made herein. Plaintiff further objects to the extent that this information is irrelevant to the issues in this case or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this request to the extent that it potentially calls for the production of documents that are subject to the attorney-client privilege and work product exemption. Subject to and without waiving these objections, Plaintiff has no documents responsive to this Request. This response is based on the documents presently known, identified and available to Plaintiff. Plaintiff reserves the right to supplement this response, without obligating himself to do so, as discovery continues.

**EHM's Position**

**No Privilege Log**

The Federal Rules of Civil Procedure permit a party responding to discovery requests to withhold information that is privileged or otherwise subject to protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed because they impede the full and fair discovery of the truth. *Consumer Financial*

1 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
2 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
3 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
4 privilege log that describes the nature of the documents being withheld with enough  
5 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
6 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
7 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

8 Plaintiff has failed to provide a privilege log, despite acknowledging that he  
9 would provide one by June 29. By July 5, almost a week later, he did not provide a  
10 privilege log. Ardalan Decl., Ex. E, ¶ 7.

11 **Guillory’s Position:**

12 Plaintiff employs his counsel to discover the infringing uses of the  
13 Photographs. As such, the only potentially responsive documents that might exist  
14 concerning this request would be privileged as attorney work product for which no  
15 privilege log is required in this Circuit.

16  
17 **REQUEST FOR PRODUCTION NO. 41**

18 All photographs or video YOU claim to have authored of 24877 Eldorado  
19 Meadow Road, Hidden Hills. (Your response should include the native files.)

20 **PLAINTIFF’S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
21 **41:**

22 Plaintiff objects to this Request to the extent that it is duplicative of other  
23 requests made herein. Plaintiff objects to this Request to the extent that it calls for  
24 the production of documents which are already in Defendant’s possession, custody  
25 and/or control. Subject to and without waiving these objections, Plaintiff refers  
26 Defendant to the original photographs.

27 //

28 //

1           **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
2           **NO. 41**

3           Plaintiff objects to this Request to the extent that it is duplicative of other  
4 requests made herein. Plaintiff objects to this Request to the extent that it calls for  
5 the production of documents which are already in Defendant's possession, custody  
6 and/or control. Subject to and without waiving these objections, Plaintiff refers  
7 Defendant to the original photographs. After a reasonable and diligent search, these  
8 are the only documents responsive to this request at this time.

9           **EHM's Position**

10          **No Native Files**

11          EHM expressly requested that native photograph and video files be produced  
12 of the works at issue because the native files contain metadata. That metadata  
13 frequently includes the name of the author, the type of camera, the date the  
14 photograph was taken, all of which is relevant to ownership. Moreover, it will allow  
15 EHM to corroborate the information Plaintiff provided to the Copyright Office in  
16 its application for registration. Plaintiff did not produce natives. Ardalan Decl., ¶ 9.

17          **Guillory's Position:**

18          The native files have been produced.  
19

20          **REQUEST FOR PRODUCTION NO. 42**

21          All COMMUNICATIONS about any photographs or video YOU claim to  
22 have authored of 24877 Eldorado Meadow Road, Hidden Hills. (Your response  
23 should include the native files.)

24          **PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION NO.**  
25          **42:**

26          Plaintiff objects to this request to the extent that it is duplicative of other requests  
27 made herein. Plaintiff objects to this request in that the term COMMUNICATIONS  
28 "about any photographs" is vague, ambiguous, and overbroad. Plaintiff objects to



1 this request to the extent that it potentially calls for the production of proprietary or  
2 confidential business information and/or documents that are subject to the attorney-  
3 client privilege and work product exemption. Plaintiff objects to this request to the  
4 extent that it would call for the creation of documents, rather than the production of  
5 existing documents. Subject to and without waiving these objections, Plaintiff refers  
6 Defendant to the electronic correspondence between Plaintiff, Missy Improta, Jason  
7 Improta, and Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along  
8 with Plaintiff's invoice for the photographs dated November 29, 2021. This  
9 response is based on the documents presently known, identified and available to  
10 Plaintiff. Plaintiff reserves the right to supplement this response, without obligating  
11 himself to do so, as discovery continues.

12 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**  
13 **NO. 42**

14 Plaintiff objects to this request to the extent that it is duplicative of other  
15 requests made herein. Plaintiff objects to this request in that the term  
16 COMMUNICATIONS "about any photographs" is vague, ambiguous, and  
17 overbroad. Plaintiff objects to this request to the extent that it potentially calls for  
18 the production of documents that are subject to the attorney-client privilege and  
19 work product exemption. Plaintiff objects to this request to the extent that it would  
20 call for the creation of documents, rather than the production of existing documents.  
21 Subject to and without waiving these objections, Plaintiff refers Defendant to the  
22 electronic correspondence between Plaintiff, Missy Improta, Jason Improta, and  
23 Katie Pederson dated November 7, 8, 10, 21, 22, and 28, 2021, along with Plaintiff's  
24 invoice for the photographs dated November 29, 2021. After a reasonable and  
25 diligent search, these are the only documents responsive to this request at this time.  
26 This response is based on the documents presently known, identified and available  
27 to Plaintiff. Plaintiff reserves the right to supplement this response, without  
28 obligating himself to do so, as discovery continues.

1           **EHM's Position**

2           **No Native Files**

3           EHM expressly requested that native photograph and video files be produced  
4 of the works at issue because the native files contain metadata. That metadata  
5 frequently includes the name of the author, the type of camera, the date the  
6 photograph was taken, all of which is relevant to ownership. Moreover, it will allow  
7 EHM to corroborate the information Plaintiff provided to the Copyright Office in  
8 its application for registration. Plaintiff did not produce natives. Ardalan Decl., ¶ 9.

9           **No Privilege Log**

10          The Federal Rules of Civil Procedure permit a party responding to discovery  
11 requests to withhold information that is privileged or otherwise subject to  
12 protection. See Fed. R. Civ. Pro. 26(b)(5). But privileges are narrowly construed  
13 because they impede the full and fair discovery of the truth. *Consumer Financial*  
14 *Protection Bureau v. CashCall, Inc.*, 2016 WL 7444910, cv 15-07522-JFW  
15 (RAOx), \*3 (C.D. Cal. 2016), *Eureka Fin. Corp. v. Hartford Acc. & Indem. Co.*,  
16 136 F.R.D. 179, 183 (E.D. Cal. 1991). “[T]he objecting party must produce a  
17 privilege log that describes the nature of the documents being withheld with enough  
18 information to enable other parties to assess the claim.” *Id.* (alteration and internal  
19 quotations omitted) (citing Fed. R. Civ. P. 26(b)(5)(A)(ii); *Perry v.*  
20 *Schwarzenegger*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009)).

21          Plaintiff has failed to provide a privilege log, despite acknowledging that he  
22 would provide one by June 29. By July 5, almost a week later, he did not provide a  
23 privilege log. Ardalan Decl., Ex. E, ¶ 7.

24           **Guillory's Position:**

25          This request is duplicative of a number of other requests which have  
26 already been discussed above. In the interest of not being duplicative, Plaintiff  
27 incorporates all of its prior responses herein.

**IV. THE COURT SHOULD ISSUE SANCTIONS AGAINST PLAINTIFF  
AND ITS COUNSEL**

**EHM's Position**

The issues in this motion are neither complicated nor controversial. The deficiencies in the discovery responses are clear cut and should have been readily fixed after the parties' meet and confer efforts, but they were not. It is stunning that the party who brought the lawsuit is unwilling to explain how he was harmed, or provide documents supporting his claim for damages, and that he refused to provide a verification under oath, as required by the text of Rule 33. These simple issues should not have required Court intervention.

Making matters worse, counsel said she would try her best to get responses by June 29, 2023. Ardalan Decl., ¶ 7, Ex. E. She did not and did not respond to counsel's email requesting an update about when she could expect supplemental responses. Ardalan Decl. ¶ 7. Plaintiff provided supplemental responses on July 5, after counsel invested significant time drafting this motion to compel, thus requiring EHM to spend additional money redrafting the motion to conform with the supplemental responses. *Id.*

**Guillory's Position**

Plaintiff agrees that the issues in this motion are neither complicated nor controversial. Where Plaintiff and Defendant clearly disagree is why Defendant maintains that it has the right to the production of documents (e.g. privilege log for communications between counsel and client concerning this action, settlement agreements with third-parties) which are either entirely irrelevant to this matter or are specifically not required to be produced in this Circuit. This motion is both unnecessary and a waste of Plaintiff's time and this Court's resources. To the extent that sanctions are warranted, which Plaintiff believes should be the rare exception rather than the rule, and not even remotely necessary in this matter, they should be awarded against Defendant or its counsel, rather than against Plaintiff.

July 12, 2023

ONE LLP

By: /s/ Joanna Ardalan

Joanna Ardalan

Attorney for Defendant

EHM PRODUCTIONS, INC.

July 12, 2023

SANDERS LAW GROUP

By: /s/ Jaqueline Mandel

Jaqueline Mandel

Attorney for Plaintiff

Robert Guillory